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School of Diplomacy and International
Relations

Spring 2022

DIPL 3104 Public International Law

Philip Moremen Ph.D.
Seton Hall University

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Recommended Citation

Moremen, Philip Ph.D., "DIPL 3104 Public International Law" (2022). *Diplomacy Syllabi*. 653.
<https://scholarship.shu.edu/diplomacy-syllabi/653>

PUBLIC INTERNATIONAL LAW

DIPL 3104

Professor Moremen

Spring, 2022

PRELIMINARY SYLLABUS

This course explores the nature and content of the law governing relations between states and relations between states and non-state actors. The first part of the course examines the building blocks of international law; the second part applies this knowledge to particular topics, such as the use of force, human rights and international humanitarian law. By the end of the course, students will possess an understanding of the operation of the international legal system and the role of international law in international affairs.

Students will also develop their critical thinking skills and gain an introduction to legal reasoning and to legal concepts. The course requires students to read closely, to think logically and rigorously, and to become skilled in developing and critiquing arguments. The course will explore methods of legal reasoning, emphasizing principles of logic that apply to legal analysis. Students will apply and learn these legal reasoning skills throughout the course in assignments and class discussion and in a class specifically devoted to legal reasoning. The ability to think critically and analytically, and to communicate an analysis clearly, are crucial skills not only for lawyers, but for practitioners of diplomacy and for all professionals.

In terms of the learning goals and student outcomes the School's Faculty have identified as key for students, students will:

- increase their knowledge and understanding of
 - key concepts, models, theories, and debates in international relations
 - the institutional backdrop underpinning international politics, including international organizations and international law
 - the normative aspect of international relations as reflected in international law, including human rights
 - an in-depth knowledge of a particular functional area and/or region of the world
- develop skills to
 - collect, sort, and evaluate information
 - analyze complex situations and synthesize information
 - communicate effectively in oral and written form
- develop a sense of global citizenship and to employ a global perspective to:
 - recognize and understand differences among a diversity of cultures and viewpoints
 - employ a global perspective and self-awareness regarding their own culture and responsibility as world citizens
 - demonstrate leadership qualities and other essential skills of diplomacy.

COURSE REQUIREMENTS: This course will include several requirements, more fully described below: (a) completing assigned readings before class and participating in class discussions and exercises; (b) preparing several case briefs; (c) participating in a mock argument before the ICJ and submitting an 8 page paper; (d) taking a mid-term exam; and (e) taking a final examination. **Class participation and the case briefs together will be worth 15% of your grade, the ICJ Exercise will be worth 20%, the midterm 30%, and the final 35%.** No incompletes will be given except for medical or other serious emergency. I encourage you (1) to take careful class notes; (2) to prepare an outline of the course as we go along as an aid to studying for the exams; and (3) to form study groups to review the materials and issues.

- a. Readings and Participation. Class attendance and participation are a required part of the course and will be considered in determining your grade. I will expect you to read the assigned readings before class and to be prepared to discuss them in class. I will select a few students to lead discussion for each class.
- b. Case briefs. You will submit a number of case-briefs on the dates indicated in the syllabus. **Please submit briefs on Blackboard before class. Late briefs will be penalized ½ a mark; briefs that are more than a week late will not be accepted.** Each brief will be approximately a page in length, and will consist of the following information:
 - YOUR NAME, the title of the case, the court deciding the case, and the date of the decision.
 - A brief, one to three sentence summary of the facts.
 - A brief, one-sentence statement, in question form, of the issue(s) in the case.
 - A brief description of the court's decision, or "holding," on each of the issues and a brief summary/analysis of the legal basis for the decision and of the court's reasoning, including basic legal principles or relevant legal requirements.
- c. Mid-Term Exam. **There will be an in-class mid-term exam on Tuesday, March 1.**
- d. ICJ Mock Argument. You will participate in a mock argument before the ICJ. You will be graded on the 8-page paper you prepare and on your oral participation. **The ICJ argument is scheduled for Thursday, April 21. Please make sure you can participate that day and in group preparation work the previous week.** The paper will be due **Monday, April 25 at 4:00** through the class Blackboard site.
- e. Final Exam. There will be a take home final, scheduled for Friday, May 13, at noon to Sunday, May 15 at noon.

COURSE MATERIALS: The required casebook will be Janis & Noyes, International Law: Cases and Commentary (6th. ed). An optional, but strongly recommended, text is Janis, International Law (8th or 7th or earlier editions.). A number of assigned readings will come from this text; it also will serve as a useful resource. Additional readings will be placed the course Blackboard site and other readings are available online. The reading assignments listed below are subject to modification.

GRADING SCALE: The grading scale used for most assignments will be: 93 and above=A; 90-92=A-; 87-89=B+; 83-86=B; 80-82=B-; 77-79=C+; 73-76=C; 70-72=C; 67-

69-D+; 63-66=D; 60-62=D-; Below 60=F. Case briefs will be graded on a check, check minus, and check plus basis.

OFFICE HOURS AND CONTACT INFORMATION. My office hours are Thursday, 10-12 and Tuesday, 5:00-6:00 by arrangement. We can meet in Teams or in person. I am also available briefly after class. My e-mail address is philip.moremen@shu.edu (best way to reach me) and my extension is 2517.

POLICY ON INCOMPLETES

Incompletes will be given only in exceptional cases for emergencies. Students wishing to request a grade of Incomplete must provide documentation to support the request accompanied by a Course Adjustment Form (available from the Diplomacy Main Office) to the professor *before* the date of the final examination. If the incomplete request is approved, the professor reserves the right to specify the new submission date for all missing coursework. Students who fail to submit the missing course work within this time period will receive a failing grade for all missing coursework and a final grade based on all coursework assigned. Any Incomplete not resolved within one calendar year of receiving the Incomplete or by the time of graduation (whichever comes first) automatically becomes an "FI" (which is equivalent to an F). It is the responsibility of the student to make sure they have completed all course requirements within the timeframe allotted. Please be aware that Incompletes on your transcript will impact financial aid and academic standing.

PLAGIARISM AND OTHER SERIOUS ABUSES OF ACADEMIC INTEGRITY. **All forms of dishonesty, whether by act or omission, including, but not limited to, cheating, plagiarism, and knowingly furnishing false information to the University, are prohibited.** Work submitted in courses must be the product of the efforts of the student presenting the work, and contributions of others to the finished work must be appropriately acknowledged. The presentation of another's work as one's own is a serious violation of the academic process. Plagiarism and other forms of academic dishonesty will be reported to the administration, and may result in a lowered or failing grade for the course and up to possible dismissal from the School of Diplomacy. See University and School standards for academic conduct here:

<https://www.shu.edu/student-life/upload/Student-Code-of-Conduct.pdf> and
<https://www.shu.edu/diplomacy/academic-conduct.cfm>.

In a paper like the ICJ paper, where you quote language word for word from a source, you must place it in quotation marks or in a block quote and give the exact source for each quoted passage. Where you paraphrase something, you must cite the source. Where you refer to or use an author's insight or idea, you must cite the source. Lifting or paraphrasing language from a web site without indication and citation is plagiarism.

More particularly: any indication of plagiarism on a case brief will result in a failing grade for the assignment and a reduction in the participation grade for the class. **Any indication of plagiarism in the ICJ Paper** will result in a minimum reduction of 10 points in the score for the assignment, may result in a failing grade for the course or for the assignment, and will be reported to the School's administration. A repeated incident

of plagiarism (i.e., more than one) almost certainly will result in a failing grade for the class and will be reported to the administration.

LATE OR INCOMPLETE ASSIGNMENTS. Students who anticipate not being able to complete an assignment on time should inform me as soon as possible. Absent prior communication, failure to complete an assignment on its due date will result in a grade penalty. Late assignments (except journal entries—see above) will be penalized by one-third letter grade every two days (i.e., an A assignment turned in up to two days late is an A-, up to four days late a B+, etc.) except in cases of medical/family emergency or COVID-related issues.

STUDENTS WITH DISABILITIES

It is the policy and practice of Seton Hall University to promote inclusive learning environments. If you have a documented disability you may be eligible for reasonable accommodations in compliance with University policy, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and/or the New Jersey Law against Discrimination. Please note, students are not permitted to negotiate accommodations directly with professors. To request accommodations or assistance, please self-identify with the Office for Disability Support Services (DSS), Duffy Hall, Room 67 at the beginning of the semester. For more information or to register for services, contact DSS at (973) 313-6003 or by e-mail at DSS@shu.edu.

CORONAVIRUS SAFETY. Our mask mandate remains mandatory for indoors (unless you're alone or eating) and in effect until further notice. The language was clear last year: No mask, no class. Updates can be found here: <https://www.shu.edu/health-intervention-communication/>

CAPS. As part of our commitment to the health and well-being of all students, Seton Hall University's Counseling and Psychological Services (CAPS) offers initial assessments, counseling, crisis intervention, consultation, and referral services to the SHU community. The CAPS office is located on the second floor of Mooney Hall, room 27. Appointments can be made in-person or by calling 973-761-9500 during regular business hours, Monday-Friday, 8:45 a.m. - 4:45 p.m. In case of a psychological emergency, call CAPS (973-761-9500) at any time to speak to a crisis counselor. For more information, please visit: <https://www.shu.edu/counseling-psychologicalservices/index.cfm>

CURRICULUM AND READINGS

Text = Janis & Noyes, International Law: Cases and Commentary.

Janis = Janis, International Law. Pages are from the 8th and 7th editions.

Blackboard = The course Blackboard site.

Online = Various readings available on the web or through SHU library databases.

Introduction.

1. [1/20] Introduction
2. [1/25] History of International Law. [Please read in the order assigned.]

- Janis: 181-185 [7th ed. 169-173] [also on Blackboard—copy comes from an earlier edition].
 - Text: 1-3, 34 (bottom of page)-40.
 - Blackboard: Akehurst, Modern Introduction to Int'l Law, 15-18.
- Introduction to Sources of Int'l Law.
- Janis: 4-8, 64-67 [7th ed. 4-8, 62-65] [also on Blackboard].
 - Text: 29-31; 1183-1184 (UN Charter Arts. 92, 93, 94).

Sources of International Law

3. [1/27] Law of Treaties I. Text: 47 (note 6)-68. U.S. Constitution, Art. II (Text: 1158).
4. [2/1] Law of Treaties II. Text: 68-78; 91-102. **Please brief the Reservations to the Genocide Convention case.**
5. [2/3] Custom 1. Text: 113-130.
6. [2/8] Custom 2. Text: 17-27. **Please brief the Filartiga case.**
7. [2/10] General Principles, Jus Cogens, Soft Law:
 - Text: 155-166; 185-188.
 - Janis: 60-72 [7th ed., 57-70; 83-86].
8. [2/15] Equity; Logic for Lawyers.
 - Text: 195-215.
 - Blackboard: Aldisert, *et al.*, Logic for Law Students.

International Law and Municipal Law.

9. [2/17] Treaties in Municipal Law 1. U.S. Constitution Art. 6 (Text: 1159); Text: 217; 221 (note 3)-236.
 - Suggested: Janis: _____ [7th ed., 87-92]
10. [2/22] Treaties in Municipal Law 2.
 - Text: 242 (n. 1)-261. **Please brief Dames & Moore v. Regan.**Customary Law in Municipal Law:
 - Recommended: Janis, _____ [7th ed., 105-113]

States and Allocation of Authority among States.

11. [2/24] States and Jurisdiction
 - Text: 987-988; 130-142.
 - Blackboard: Epps, International Law, 93-111.
12. [3/1] **MIDTERM**

State Responsibility and State Protection.

13. [3/3] In general.
 - Blackboard: Henkin et al., International Law, (3rd ed.) 544-549.
 - Text: 465-477; 177 (note7)-179; 182-184.

SPRING BREAK

14. [3/15] Responsibility for Injuries to Aliens. Blackboard: Henkin, et al., International Law (3rd ed.) 677-682; 693-695; 708-717; 725-727.

Human Rights.

15. [3/17] Human Rights. Text: 495-519.
-Blackboard: International Covenant on Civil and Political Rights (Skim the ICCPR, paying special attention to articles 2-7).
-Blackboard: U.S. Reservations to the ICCPR.
16. [3/22] -Blackboard: Dunoff, et al. Int'l Law (5th ed., 2020), 355-380.

Humanitarian Law (Jus in Bello)

17. [3/24] Humanitarian Law
-Blackboard: Murphy, Jus in Bello, *in* Principles of Int'l Law, 602-604; 607-616
-Blackboard: Geneva Convention Relative to the Treatment of POWs (III) [Common Articles 2-3, Articles 4-5, and for reference]. Note especially the distinction between international conflicts (art. 2) and non-international conflicts (art. 3).
-Blackboard: Dunoff et al., Int'l Law (4th ed., 2014) 833-836.
-Text: 752 (note 2)-768.
18. [3/29] Humanitarian Law (cont'd) Protection of Civilians
-Blackboard: Dunoff et al., Int'l Law (4th ed. 2015) 436-450.

The United Nations and War and Peace.

19. [3/31] The Use of Force. UN Charter, Art. 2 (Text: 1078). Text: 768-783; 662-673; 837-838.
20. [4/5] The U.N. and the Use of Force. UN Charter, Articles 24, 25, and Chapters VI, VII, and VIII (Text: 1084, 1085-1090). Text: 783-813.
21. [4/7] Post-Cold War Use of Force: The 2003 War in Iraq; Terrorism; Humanitarian Intervention.
-Text: 813-826; 830 (note 3)-846.
22. [4/12] Humanitarian Intervention (continued) Organization for ICJ Exercise
-Text: 846-855.
-Read background materials for ICJ argument.

EASTER BREAK—NO CLASS 4/14

23. [4/19] **Group Meetings in class to Prep ICJ Argument**
24 [4/21] **ICJ Exercise.**

ICJ PAPER DUE: MONDAY, APRIL 25, AT 4:00

25. [4/26] -Protecting the Ozone Layer: The Montreal Protocol
-Text: 683-700.

International Criminal Tribunals.

26. [4/28] -Text: 554-571.
-Blackboard: Statute of the International Criminal Court [review the first 20 sections].

International Law and IR Theory

27. [5/3] -Blackboard: Keohane, International Relations and International Law: Two Optics, 38 Harv. Int'l L. J. 487 (1997).
-Blackboard: Arend, Do Legal Rules Matter? International Law & International Politics, 38 Va. J. Int'l L. 107 (1998).
-Blackboard: Slaughter, A Liberal Theory of International Law, in Foundations of International Law and Politics (Hathaway & Koh, eds.)
28. [5/5] Recognition of States
-Text: 583-597
29. [5/10] Review